

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS**

SPENCER DRAKE,
THEDRAKEISGOOD, LLC.,
d/b/a WHITE HAT DISTRIBUTION

vs.

MEDEROS CIGARS, LLC.,

Defendants.

Civil Action No. 16-cv-00651

**COMPLAINT FOR DECLARATORY JUDGMENT
OF NON-INFRINGEMENT OF COPYRIGHT AND
CANCELLATION OF COPYRIGHT REGISTRATION**

COMES NOW Spencer Drake and his company TheDrakeIsGood, LLC, d/b/a White Hat Distribution (“Plaintiffs”) and pursuant to 28 U.S.C. §§2201 and 2202 request a declaratory judgment of non-infringement of a copyright registration alleged to be owned by Defendant Mederos Cigars, LLC, (“Defendant” or “Mederos”). Further, Plaintiffs seek cancellation of Copyright Registration No. VA0001991480 because the Copyright Registration was obtained by fraud. In support of the requested relief, Plaintiffs offer the following legal and factual support:

PARTIES

1. Plaintiff Spencer Drake is a resident of Houston, Texas and is the owner of TheDrakeIsGood, LLC d/b/a White Hat Distribution. Spencer Drake conducts business in this District.

2. TheDrakeIsGood, LLC d/b/a White Hat Distribution is a premium cigar distribution Texas limited liability company.

3. Upon information and belief, Defendant Mederos Cigars, LLC is a Florida limited liability company with a business address of 4000 Ponce de Leon, Coral Gables, Florida 33145, and conducts business in this District.

JURISDICTION

7. This Court has personal jurisdiction over Defendant Mederos Cigars, LLC, because Defendant conducts, and has conducted significant business in this District. Specifically, Defendant, by and through its principals, has traveled to Texas on multiple occasions to conduct business related to the sale of cigars.

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §2201 which states, *inter alia*, “ ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

5. The facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

VENUE

6. Venue is proper pursuant to 28 U.S.C. §1391(b)(2).

BACKGROUND

8. On February 29, 2016 Spencer Drake received an email from Louis Gigliotti, Esq. as counsel for Mederos Cigars, LLC. See Exhibit A.

9. In that email, Defendant, through their counsel, directly threatened Plaintiffs with copyright infringement if they distributed any cigar products, which bear the artwork subject to Copyright Registration No. VA0001991480. See Exhibit A.

10. Worse still, counsel for Defendant sent a similar threatening email to Plaintiffs' independent sales representatives that caused a significant disruption in Plaintiffs' business. See Exhibit A.

11. Spencer Drake, through his company, are in fact distributing these products from the original manufacturer and therefore believe that there is a substantial controversy between the parties of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

12. Plaintiffs will be irreparably harmed if Defendant is allowed to continue its unlawful threat of copyright infringement litigation based upon a copyright registration that was obtained fraudulently.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF COPYRIGHT REGISTRATION NO. VA0001991480

13. Plaintiffs re-allege and incorporate herein the allegations of the proceeding paragraphs of this Complaint as if fully set forth herein.

14. As of a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

15. A judicial declaration is necessary and appropriate so that Plaintiffs may ascertain their rights regarding Copyright Registration No. VA0001991480.

16. Plaintiffs are entitled to a declaratory judgment that they have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of Copyright Registration No. VA0001991480.

COUNT II
CANCELLATION OF COPYRIGHT REGISTRATION NO. VA0001991480 FOR
FRAUD ON THE COPYRIGHT OFFICE

17. Plaintiffs re-allege and incorporate herein the allegations of the proceeding paragraphs of this Complaint as if fully set forth herein.

18. Upon information and belief, Defendant is not the owner of all right and title to the content subject to Copyright Registration No. VA0001991480.

19. If Defendant has any authorship of the subject Copyright Registration it is not the sole author of the content.

20. Defendant's registration of the content constitutes fraud on the Copyright Office because it either: (1) is not the author of any of the content; (2) failed to include a co-author to the content namely Luis Gonzalez; and/or (3) failed to include information relating to a pre-existing image which Defendant pulled from the Internet and does not own.

21. Thus, because of the material misrepresentations made by the Defendant to the Copyright Office, the Copyright Registration is unenforceable and should be cancelled.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. A declaration and/or judgment from this Court that:
 - a. Plaintiffs have not infringed Copyright Registration No. VA0001991480.

b. Copyright Registration VA0001991480 be cancelled because of fraud on the Copyright Office.

2. An order and judgment temporarily, preliminarily and permanently enjoining Defendant its officers, directors, agents, servants, employees, affiliates, attorneys, parents, subsidiaries, divisions, successors and assigns, and those persons acting in concert or in participation with Defendant from contacting Plaintiffs, their sales representatives, their accounts, or any other person or entity that does business with Plaintiffs, threatening same with Copyright Infringement, or otherwise enforcing or attempting to enforce their fraudulently obtained Copyright Registration No. VA0001991480.

4. Actual damages suffered by Plaintiffs as a result of Defendant's unlawful conduct, in an amount to be proven at trial.

5. Costs of the suit and reasonable attorneys' fees as provided by law.

6. Any other remedy or relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury of all issues so triable.

Dated March 10, 2016.

/s/ Kimberly S. Moore

KIMBERLY S. MOORE

State Bar No. 00784629

kim.moore@strasburger.com

STRASBURGER & PRICE, LLP

2801 Network Blvd.

Suite 600

Frisco, TX 75034

469.287.3900

469.287.3999 Fax

JANA H. WOELFEL

State Bar No. 00788701

jana.woelfel@strasburger.com

909 Fannin Street

Suite 2300

Houston, Texas 77010

713.951.5600

713.951.5660 Fax